

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

United States of America,

Criminal No. 13-CR-89 (SRN)

Plaintiff-Respondent,

v.

ORDER

Robert Lee Powers,

Defendant-Petitioner.

Thomas M. Hollenhorst and Andrew S. Dunne, United States Attorney's Office, 300 South Fourth Street, Suite 600, Minneapolis, Minnesota 55415, on behalf of Plaintiff-Respondent

Robert Lee Powers, Reg. No. 03487-041, Federal Correctional Institution, P.O. Box 5000, Pekin, Illinois 61555, Pro Se Defendant-Petitioner

SUSAN RICHARD NELSON, District Judge

This matter is before the undersigned United States District Judge on two motions filed by Defendant-Petitioner Robert Lee Powers entitled "Second-in-Time § 2255 Motion" [Doc. Nos. 85 & 88]. In May 2015, Powers filed his first motion to vacate pursuant to 28 U.S.C. § 2255 [Doc. No. 52]. On September 28, 2015, this Court denied Powers' first § 2255 motion on the merits. (Order of 9/28/15 [Doc. No. 70].) On June 14, 2016, Powers filed an application with the Eighth Circuit, requesting permission to file a second or successive motion under § 2255. While that request was pending in the Eighth Circuit, Powers filed the two successive § 2255 motions at issue here [Doc. Nos.

85, 88] on August 11 and 17, 2016, respectively. On August 30, 2016, the Eighth Circuit denied Powers' request to file a successive § 2255 motion and issued its mandate [Doc. No. 89 & 90].

Before a petitioner in federal custody files a second or successive § 2255 petition in the district court, he must obtain an order from the court of appeals granting permission. United States v. Lee, 792 F.3d 1021, 1023, (8th Cir. 2015) (citing 42 U.S.C. § 2255(h)). Because Powers filed the two subsequent § 2255 motions in this Court without first obtaining authorization, and the Eighth Circuit then denied his request, this Court is without jurisdiction to entertain his petitions. See 28 U.S.C. § 2255(h) (a successive § 2255 motion must be certified by a panel of appropriate the court of appeals before it may be filed in the district court); Boyd v. United States, 304 F.3d 813, 814 (8th Cir. 2002) (per curiam) (holding that the district court is to dismiss unauthorized successive § 2255 motions). As the Court lacks jurisdiction to consider Powers' motions, they are denied.

Based upon the foregoing, and all the files, record, and proceedings herein, **IT IS
HEREBY ORDERED** that

Defendant-Petitioner Robert Lee Powers' "Second-in-Time § 2255 Motions"
[Doc. Nos. 85 & 88] are **DENIED**.

Dated: March 31, 2017

s/Susan Richard Nelson
SUSAN RICHARD NELSON
United States District Court Judge